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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JEFFREY H. SCHWARTZ,	:	06 CV 1149 (ARR)
<i>Special Personal Injury Counsel to the Trustee,</i>	:	
Appellant,	:	<u>NOT FOR</u>
-against-	:	<u>ELECTRONIC OR PRINT</u>
	:	<u>PUBLICATION</u>
ROBERT L. GELTZER,	:	
<i>Chapter 7 Trustee,</i>	:	<u>ORDER</u>
Appellee.	:	
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ROSS, United States District Judge:		

This case comes to this court on appeal from an order of the Honorable Carla E. Craig of the U.S. Bankruptcy Court for the Eastern District of New York in In re Sueann M. Smith, No. 04-16320-608 (CEC), which was signed on January 17, 2006 and entered on January 18, 2006. The issue currently before this court is whether appellant filed a timely notice of appeal under Bankruptcy Rule 8002. On March 29, 2006, this court instructed the parties to submit any relevant evidence and memoranda of law.

Bankruptcy Rule 8002(a) provides that a notice of appeal “shall be filed with the clerk within 10 days of the date of the entry of the judgment, order, or decree appealed from.” Appellee contends that: (1) under Rule 8002(a), appellant’s notice of appeal should have been filed by January 30, 2006 (January 28, 2006 was a Saturday); (2) appellant’s notice of appeal was not filed until February 2, 2006; (3) appellant’s notice was untimely; and (4) as a result, this court has no jurisdiction to hear appellant’s appeal. Appellant claims that his notice of appeal was, in fact, filed on January 30, 2006 and was therefore timely.

The court notes that section (b) of Bankruptcy Rule 8002 provides for an extension of the time for appeal if any party timely moves

- (1) to amend or make additional findings of fact under Rule 7052, whether or not granting the motion would alter the judgment;
- (2) to alter or amend the judgment under Rule 9023;
- (3) for a new trial under Rule 9023; or
- (4) for relief under Rule 9024 if the motion is filed no later than 10 days after the entry of judgment.

Bankr. R. 8002(b). Section (b) states that, if any of the above motions were timely filed, “the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding.” Id. The Bankruptcy Court Docket Sheet shows that appellant filed several motions following the December 7, 2005 hearing on the Trustee’s Motion and the entry of Judge Craig’s January 18, 2006 order.

In their submissions to this court, neither appellant nor appellee addressed what if any effect Rule 8002(b) has on the timeliness of appellant’s notice of appeal. It is hereby

ORDERED that appellant shall serve and file a supplemental memorandum of law addressing the effect, if any, of Rule 8002(b) on the timeliness of his appeal, accompanied by any necessary evidentiary submissions, by Wednesday, May 10, 2006; and it is further

ORDERED that appellee shall serve and file a supplemental response addressing the effect, if any, of Rule 8002(b) by Wednesday, May 17, 2006.

SO ORDERED.

Allyne R. Ross
United States District Judge

Dated: May 5, 2006
Brooklyn, New York

SERVICE LIST:

Appellant

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cc: Honorable Carla E. Craig, U.S. Bankruptcy Court E.D.N.Y.